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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1943.

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No. 344.  
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C. F. MOODY, *Petitioner*,

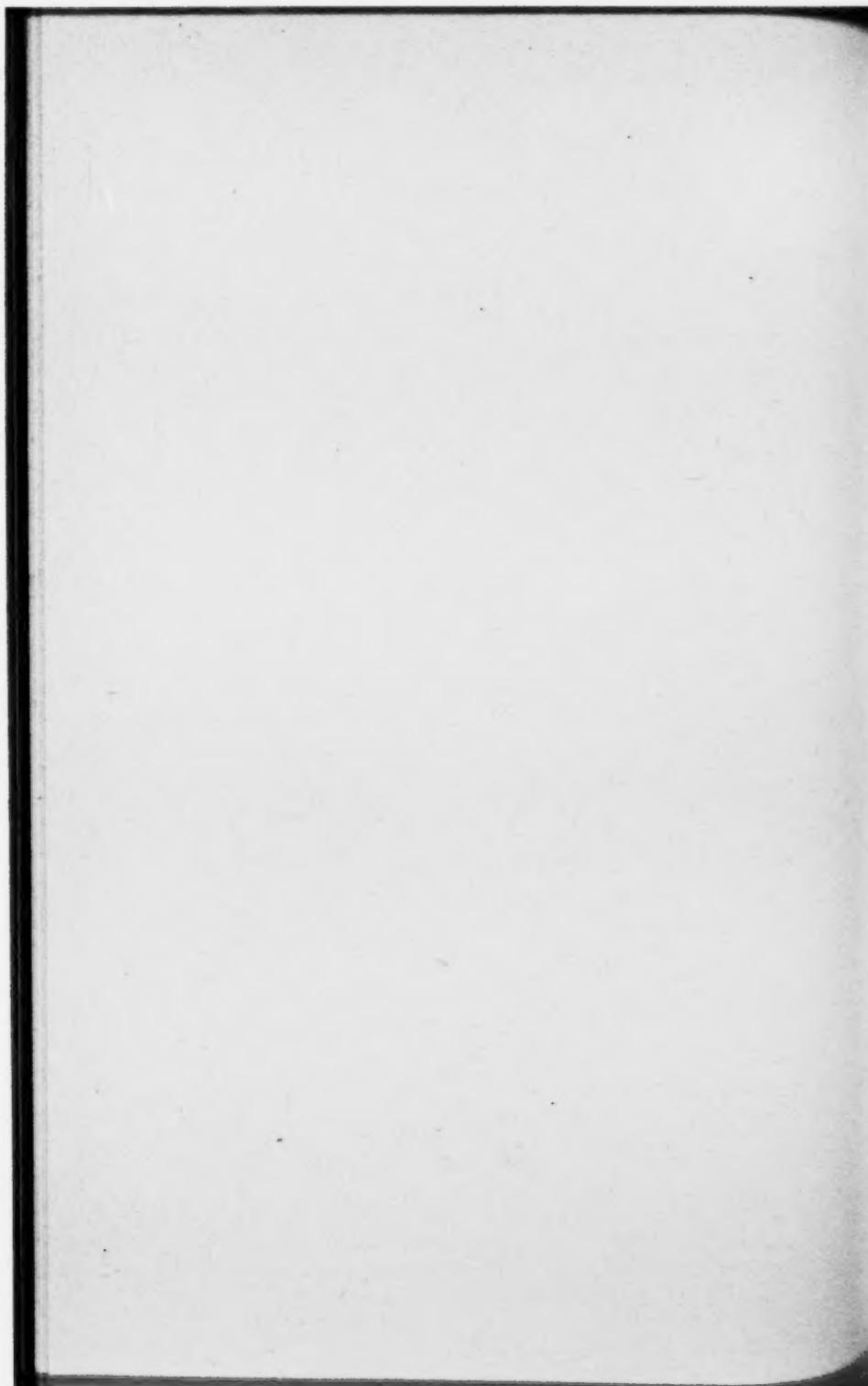
v.

CLAUDE R. WICKARD, Secretary of Agriculture, and HENRY  
MORGENTHAU, JR., Secretary of the Treasury, and  
UNITED STATES OF AMERICA, Intervenor  
*Respondents.*

—  
On Petition for Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia.

—  
**REPLY BRIEF FOR PETITIONER.**

—  
G. LYLE JONES  
JOHN WATTAWA  
*Attorneys for Petitioner*



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## REPLY BRIEF FOR PETITIONER.

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### I.

The opinion of the Court of Appeals (R. 79-82) is now reported, 136 F. (2d) 801, Advance Sheets September 6, 1943.

### II.

The Court of Appeals made no determination respecting Petitioner's right to mandatory relief, or the claims under the Complaint in Intervention. It held that the personal money judgment was invalid, and that, therefore, the questions raised on the Complaint in Intervention did not re-

quire consideration; and the judgment of the District Court was accordingly affirmed.

Petitioner submits that, in the circumstances, questions 2 and 3, purported to be additionally presented on page 2 of Respondent's brief, and argument thereupon, pages 10, 11, and 12, are not properly a part hereof.

### III.

The United States appropriated Petitioner's lands nearly nine years ago. Now, and for the first time, the assertion is made on its behalf (Respondent's Brief, 10), that the property has been abandoned. No record reference supports that assertion, nor are any details vouchsafed as to when, and in what manner, the abandonment occurred. The condemnation proceeding still stands in the United States District Court in North Carolina, and possession of the property has never been tendered back to the Petitioner.

The condemnor moved August 30, 1938, in said condemnation proceeding, for permission to withdraw said tracts (R. 59, 61, 80), and again December 3, 1938, for permission to withdraw that Motion to withdraw and to have the cause thence proceed to judgment (R. 46, 62, 80). The latter Motion was granted by the judgment entered January 24, 1939, (R. 24), and no appeal was prosecuted therefrom, nor from any part thereof. This judgment also decreed that the United States "is the owner in fee simple" of said tracts. As long as that judgment remains valid, binding, and final, of record, such owner cannot legally abandon.

### IV.

In *United States v. Boston C. C. & N. Y. Canal Co.*, 271 Fed. 877, cited Respondent's Brief 7, 8, the United States took over control of the Cape Cod Canal on July 25, 1918, as a war measure, pursuant to Presidential proclamation July 18, 1918, and remained in such control until March 1, 1920, when the same was turned back to the Canal Company.

On April 1, 1919, condemnation proceeding was brought under the River and Harbor Act of August 8, 1917. On August 31, 1920 (six months after control had been turned back), judgment was entered therein providing that upon payment of a certain sum, title should vest in the United States if it had not already vested, and providing further that in default of such payment within a reasonable time, the Company could then seek to have the control under the proclamation declared to have been a sequestration requiring compensation in the definite amount found in the condemnation proceeding. It was held upon appeal that in the circumstances, and under the verdict, the judgment should not have exceeded the conditional form provided for by the Act of 1917, under which that proceeding had been brought.

In summary, the United States was shown not to have appropriated title as in the case at bar, but to have had only a temporary control, effected solely as a war measure under Executive Order, such control having been relinquished six months prior to entry of judgment in the condemnation proceeding, and not thereafter existing. The United States never had appropriation, or even possession, at any time as incident to the condemnation proceeding.

*Mason City and Fort Dodge R. Co. v. Boynton*, 158 Fed. 599, cited Respondent's Brief 8, involved a condemnation proceeding predicated on an Iowa statute under which possession (not appropriation of title) had been taken pending an appeal after the amount of the Commissioners' award had first been deposited as required. As the facts are obviously distinguishable, the decision is inapplicable.

## V.

None of Respondents' authorities challenge Petitioner's contentions that when the land has been actually appropriated, as adjudged in the case at bar, the condemnor cannot thereafter abandon the proceeding. 121 A. L. R. 72. Generally, the entry of judgment on the award in a con-

demnation proceeding also creates vested rights, thereby precluding abandonment. 121 A. L. R. 44.

This Court has held that there is a distinction between damage, and taking, and that it must be observed in applying the constitutional provision that private property shall not be taken without just compensation. *Bedford v. United States*, 24 S. Ct. 238, 240, 192 U. S. 217, 48 L. ed. 414, citing (240) *Gibson v. United States*, 166 U. S. 269, 41 L. ed. 996, 17 S. Ct. 578; *United States v. Lynah*, 188 U. S. 445, 47 L. ed. 539, 23 S. Ct. 349; *Pumpelly v. Green Bay and M. Canal Co.*, 13 Wall. 166, 20 L. ed. 557.

#### CONCLUSION.

Within recent years, and particularly since the beginning of hostilities, the United States has taken over an increasing number of large areas of land from its citizens, and will probably continue to do so for an indefinite period. Accordingly, in view of that situation, and of the other aspects shown herein, it appears clear that the United States Court of Appeals for the District of Columbia has decided a question of general importance which has not been, but should be, settled by this Court.

Respectfully submitted,

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